

STATE OF WISCONSIN

2003-05 BIENNIAL REPORT

**NICHOLAS L. CHIARKAS
STATE PUBLIC DEFENDER**

OVERVIEW OF THE OFFICE OF THE STATE PUBLIC DEFENDER

The Office of the State Public Defender is an independent executive agency, which operates under the direction of the Public Defender Board. The Board has nine members who are nominated by the Governor, with the advice and consent of the Senate, for staggered three-year terms. A minimum of five members of the Board must be members of the State Bar of Wisconsin.

Under Wisconsin Statutes, s. 977.02, Stats., the Board's functions include:

1. Appointment of the state public defender (s. 977.02(1), Stats.);
2. Submission of the budget of the state public defender to the governor (s. 977.02(2), Stats.);
3. Promulgation of administrative rules;
4. Review of decisions of the state public defender regarding private bar bill payments (s. 977.02(7), Stats.);
5. Establishing agreements with state and local bar associations, law firms, and private counsel designed to encourage pro bono legal representation for indigent persons (s. 977.02(7m), Stats.); and
6. Performance of all other duties necessary and incidental to the performance of any duty enumerated in chapter 977 (s. 977.02(8), Stats).

The members of the State Public Defender Board are: Daniel M. Berkos, Chair, Mauston; James M. Brennan, Vice-Chair, Milwaukee; Stella A. Young, Racine; John Hogan, Rhinelander; Joe Morales, Racine; Ellen Thorn, Sparta; Nancy Wettersten, Madison; and Mai Neng Xiong, Wausau.

One new board member has been nominated and is awaiting confirmation by the Legislature: Regina Duncan, Beloit. John Hogan's reappointment to the board is also pending confirmation.

Nicholas L. Chiarkas, the State Public Defender, serves at the pleasure of, and reports to, the State Public Defender Board. Under section 977.05(4), Stats., the State Public Defender's duties include:

1. Supervising all operations of the agency;
2. Making final decisions on all agency policy;

3. Making final hiring decisions;
4. Making final decisions on all disciplinary actions;
5. Making final decisions on all promotions in response to the advice of division administrators;
6. Establishing a case management system for use by the trial and appellate staff attorneys;
7. Making all final decisions regarding the supervision and disposition of any case handled by the office;
8. Overseeing the quality of work of the staff and approximately 1,000 private practitioners who accept public defender cases, including overseeing the structure of the appointment process;
9. Making all decisions on whether to decertify private attorneys who have allegedly failed to meet the obligations to public defender clients;
10. Accepting referrals from judges, courts or state agencies for the determination of eligibility of persons who claim or appear to be eligible;
11. Accepting referrals from judges and courts for the provision of legal services without a determination of eligibility of children who are entitled to be represented by counsel under ss. 48.23 or 938.23, Stats.;
12. Accepting requests for legal services from children who are entitled to be represented by counsel under ss. 48.23 or 938.23, Stats., and from eligible persons who are entitled to be represented by counsel under the statutes or the constitutions;
13. Providing legal services in felony, misdemeanor, civil commitment, juvenile, and paternity cases, as specified by state statute;
14. Developing and defining standards of performance for the staff and private attorneys;
15. Working in conjunction with the Board of Attorneys Professional Responsibility and the Supreme Court on matters of attorney discipline;
16. Developing long-term statewide plans;

17. Maintaining relationships with the judiciary by interpreting for them State Public Defender agency policy, resolving controversy with staff and maintaining their support for the program;
18. Representing the defense perspective and State Public Defender agency interests in a range of committees or commissions, either personally or by delegation. This includes representation of the agency in the National Legal Aid and Defender Association, and the American Bar Association;
19. Supervising the development of the agency's biennial budget and decide which items are to be recommended to the Board, Governor and Legislature.

The Office of the State Public Defender has a Deputy State Public Defender and consists of four divisions: 1) Administrative, 2) Appellate, 3) Assigned Counsel, and 4) Trial.

The Administrative Division is responsible for providing staff support services in areas such as budget preparation, fiscal analysis, purchasing, client collections and payroll.

The Appellate Division assigns cases and provides post-judgment legal representation, certifies private attorneys for appellate level appointment, serves as a resource for SPD staff and the private bar on matters of substantive and procedural criminal law and responds to all inquiries in post-conviction matters.

The Assigned Counsel Division (ACD) provides support services to certified private attorneys appointed to SPD cases. The ACD certifies private attorneys for trial level representation, provides training for private attorneys, processes investigator and expert requests for private bar attorneys in SPD cases, and administers all SPD private bar attorney payments. The ACD shares responsibility with the Trial and Appellate Divisions for monitoring private attorney performance.

The Trial Division assigns cases and provides legal representation at the trial level in criminal, civil commitment, sexual predator commitment, protective placement, probation or parole revocation, contempt of court, termination of parental rights, delinquency, paternity, and some children in need of protection or services cases. The Trial Division also represents all individuals at initial bail hearings, regardless of financial eligibility, at the request of the courts, to ensure efficient court operations.

In addition to these four divisions, three offices report to the State Public Defender: 1) Training and Development, 2) Legal Counsel, which includes Human Resources, and 3) Information Technology.

HISTORY OF THE PUBLIC DEFENDER PROGRAM THROUGH THE 2003-05 BIENNIUM

The Office of the State Public Defender's mission is to enhance the quality of justice throughout Wisconsin by providing high quality, compassionate, and cost-effective legal representation; protecting the rights of the accused; and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system.

The Office of the State Public Defender was created by state statute in 1965. Until 1972, the office consisted of one attorney, an employee of the Wisconsin Supreme Court, who represented indigents seeking post-conviction relief. The staff of this appellate office expanded gradually, and their duties were expanded to include representation of eligible individuals in probation and parole revocations. Prior to 1975, the method of providing defense counsel for an indigent defendant at the trial level was the county based assigned counsel method.

In 1977, the Public Defender Board was established and transferred from the Supreme Court to the executive branch as an independent agency. The Office of the State Public Defender was divided into a Trial Division and an Appellate Division. Funding was provided to implement a public defender program, and the responsibility for indigent defense was transferred from the counties to the state. The first trial offices were opened in 1978.

Chapter 356, laws of 1979, which became effective in July 1980, established a four-tiered system for the representation of indigents. In 25 counties, 100 percent of the cases would be handled by the private bar; in 6 counties, 50 percent of the cases would be handled by the private bar and 50 percent by staff; in 31 counties, 25 percent of the cases would be handled by the private bar and 75 percent by staff; and in 10 urban counties, 15 percent of the cases would be handled by the private bar and 85 percent by public defender staff. By 1984-85, the public defender Trial Division staff attorneys were budgeted to provide representation for approximately 75 percent of the trial court level cases in 47 counties, and approximately 84 percent of the statewide appellate court level cases.

In 1985, the Legislature repealed the sunset provision that would have returned the appointment for indigent representation to a strictly court appointed private bar basis and instituted a statewide public defender program. Staff was added to allow cases to be handled in all 72 counties. This decision reaffirmed the goals and philosophy of the public defender program and recognized that a statewide program is the most efficient, the most uniform, and the most cost-effective means for providing representation to eligible defendants.

Also in 1985, the Legislature specified a budgeted caseload for a staff attorney handling cases on the trial court level of 184.5 felony cases, 492 misdemeanor cases, or 246 "other" cases.

In June 1989, in order to establish the most cost-effective way of reducing staff caseloads to the ABA maximum standard of 150 felony or 300 misdemeanor or 200 "other" cases, the State Public Defender contracted with the Spangenberg Group to develop an appropriate caseload for the agency. In November 1990, the State Public Defender adopted the findings of the Spangenberg Group, and proposed a three-year plan to reduce staff caseloads to the level recommended by Spangenberg. A partial caseload reduction was incorporated into the agency's 1991-93 biennial budget as of July, 1991. Beginning January 1, 1993, staff caseloads were set at 166.8 felonies, 410.9 misdemeanors, 228.4 juveniles, or 256 other cases. Additionally, the 1991-93 budget enacted a special caseload standard for first degree homicides, which is a standard of 15 homicides per year.

The 1995-97 Biennial Budget, Act 27, returned caseload standards for staff attorneys to the levels existing prior to January 1, 1993. The budget also required that the agency promulgate administrative rules regarding new programs for collections, verification and assignment of private bar cases based on efficiencies. Act 27 also required the State Public Defender Board to enter into annual fixed fee contracts with private attorneys and law firms. The maximum number of cases assigned in this manner cannot exceed 33 percent of the total number of cases at the trial level.

Act 27 eliminated SPD representation in cases involving conditions of confinement, early representation, certain sentence modifications and certain appeals. In addition, representation was limited for paternity and non-payment of child support cases, probation and parole modifications, and revocations. Representation for parents whose children are involved in a CHIPS proceeding was also eliminated.

The 1997-99 Biennial Budget, Act 27, continued all the initiatives from the prior biennium including the higher caseloads, collections, verification and fixed-fee contracting. The budget also established a new statutory caseload for sexual predator cases under Chapter 980 equal to 15 cases per year.

As part of the 1995-97 Biennial Budget, all agency computer personnel were transferred to the newly created Bureau of Justice Information Systems (BJIS) within the Department of Administration (DOA). The 1997-99 Budget created a chief information officer position for the State Public Defender responsible for guiding and implementing information technology in the agency. BJIS was funded with \$2.8 million to purchase and install 368 computers (approximately two-thirds of the agency's staff) for the State Public Defender during the biennium. In December 1997, DOA approved the State Public Defender's

proposal to assume responsibility for converting the entire agency to state standard personal computers within the funding level provided in Act 17. DOA also transferred back to the agency all responsibility for information technology support and planning. By October 1998, all of the agency's offices were converted. The conversion, which was accomplished in just nine months, saved the state over \$2 million.

In 2001, Act 109 restored authority for the SPD to provide early representation. The results of a study of early representation cases showed that 23% of the early representation cases avoided felony charges, 20% avoided misdemeanor charges, 10% resulted in less serious charges, and 12% resulted in no charges filed. In a comparison of the average possible case hours and the actual hours spent on the early representation cases, a savings of 408 hours occurred, resulting in significant cost savings to the Agency.

Act 109 also expanded the categories of felonies from six to nine while eliminating the BC felony classification, and made modifications to the sentencing guidelines.

The only item in the 2003-2005 biennial budget that materially affected the SPD was a five percent base budget reduction of \$3.5 million each year. This reduction to the private bar appropriation was subsequently restored by a provision in 2003 Act 129.

Separate legislation was introduced during the 2003 legislative session that would have revised the SPD's financial eligibility standards to be consistent with those for the Wisconsin Works (W2) program. Under current law, many individuals do not qualify for SPD representation, yet are determined by the courts to be unable to afford an attorney. In those cases, the courts are obligated to appoint an attorney at county expense. Despite having broad, bipartisan support, the bill did not pass before the session ended.

AGENCY PERFORMANCE AND OPERATIONS DURING THE 2003-05 BIENNIUM

During Fiscal Year 2003-04, the SPD opened 144,678 cases; 55,414 of these were appointed to private bar attorneys on a rotational basis, and an additional 10,112 cases were appointed to private bar contractors.

In Fiscal Year 2004-05, the SPD opened a total of 143,327 cases; 55,247 of these were appointed to private bar attorneys on a rotational basis, and an additional 10,389 cases were appointed to private bar contractors.

The agency is required by statute to enter into fixed-fee contracts for not more than 33% of its private bar cases. The SPD entered into 56 fixed-fee contracts for up to 10,219 misdemeanor cases in 2003-04, and entered into 54 contracts for up to 10,594 cases in 2004-05.

State Public Defender collections from clients are received in the following categories: SPD initiated, DOA contract collections, county juvenile recoupment and court ordered payments. The following was received in each category during the biennium:

	2003-2004	2004-2005
SPD Initiated	\$1,062,838	\$1,026,624
Court Ordered Attorney Fees	100,079	91,776
Juvenile Recoupment	505,331	495,970
DOA Contractors	311,666	394,053
Total	\$1,979,914	\$2,008,423

In 2002-03, the SPD referred 79,704 delinquent client accounts, representing \$24,207,458 in accounts receivable, to the DOA contracted collection agency. In 2004-05, the SPD referred 79,336 delinquent client accounts, representing \$24,160,407 in accounts receivable.

The SPD's strategic plan for 2003-05 included a strategy to "educate stakeholders on the benefits of diversion, treatment and rehabilitation of offenders." This goal was expanded to "increase availability of diversion and sentencing alternatives" when the strategic plan was updated last year for 2005-07. To further these goals, the SPD has been a leader in the area of treatment-oriented courts, ten of which currently operate, with another eight counties or tribes in active planning stages.

In 2003-04, the Public Defender Board proposed a change to administrative rule PD 6.01 to increase by 20% the amount of repayment for cost of legal

representation, including the optional prepayment fee. The approved rule change, effective September 1, 2005, is projected to result in additional collections revenue of \$302,000 over the biennium.

The SPD received the State Council on Affirmative Action's 2005 Annual Diversity Award "for its innovative efforts to improve service delivery to Spanish speaking clients and for providing cultural competency training for its staff. (the) SPD hired an employee to perform translation/interpreter services, which positively influenced the quality of service delivery by providing on-site translation, as well as document translation. The translation service is especially helpful in rural and remote areas of Wisconsin where non-Spanish speaking staff need access to a translator at a moment's notice. Staff training was provided to sensitize staff to the culture of poverty and the challenges poverty presents to the clients' legal circumstances, and thus, enhances (SPD) employees' ability to advocate more effectively on behalf of clients."

**OFFICE OF THE STATE PUBLIC DEFENDER
PROGRAM GOALS AND OBJECTIVES INCLUDED
IN THE 2003-05 BIENNIAL BUDGET**

Due to state budget constraints, the 2003-05 biennial budget did not include initiatives to address program goals and objectives. The only item in the 2003-2005 biennial budget that materially affected the SPD was a five percent base budget reduction of \$3.5 million each year. This reduction to the private bar appropriation was subsequently restored by a provision in 2003 Act 129.

**OFFICE OF THE STATE PUBLIC DEFENDER
PROGRAM GOALS AND OBJECTIVES INCLUDED IN THE 2005-07
BIENNIAL BUDGET, 2005 Act 25**

The state's fiscal situation did not permit funding new initiatives proposed by the Public Defender Board, such as increasing the rate paid to private bar attorneys who take SPD cases, or providing base funding to implement a systematic replacement schedule for the Agency's information technology infrastructure.

The SPD's collaboration with the Department of Transportation and prosecutors resulted in Act 25 provisions that: 1) returned first offense operating after revocation to a civil penalty if the underlying revocation did not result from a traffic violation related to alcohol or a controlled substance; and 2) excludes operating after suspension or revocation violations when calculating whether an individual is a habitual traffic offender. These provisions are projected to save \$961,400 during the FY05-07 biennium.

**OFFICE OF THE STATE PUBLIC DEFENDER
PART-TIME POSITIONS AND ALTERNATIVE WORK PATTERNS**

The Office of the State Public Defender offers permanent part-time employment to its staff. Currently, 33 attorneys and 53 clerical staff work part-time. Another 10 support staff are part-time. Some of these positions also job-share.

The SPD also accommodates flexible time work schedules as requested by employees whenever possible.